

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

LeRoy K. Wheeler,

Plaintiff,

VS.

Gary A. Gardner,

Defendant.

## ORDER ADOPTING REPORT AND RECOMMENDATION

Case No. 1:06-cv-030

The plaintiff, LeRoy K. Wheeler, filed this pro se civil rights action under 42 U.S.C. § 1983 on April 5, 2006. Magistrate Judge Charles S. Miller, Jr. conducted an initial review as mandated by 28 U.S.C. § 1915A, and submitted a Report and Recommendation. Judge Miller recommended that Wheeler's application to proceed *in forma pauperis* be denied and that Wheeler's claims be dismissed without prejudice. Wheeler was then given ten (10) days to file an objection to the Report and Recommendation. On June 2, 2006, Wheeler filed an objection to the Report and Recommendation. (Docket No. 4).

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the record as a whole and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 3) in its entirety. As a result, Wheeler’s application to proceed *in forma pauperis* (Docket No. 2) is denied, and Wheeler’s claims are **DISMISSED** without prejudice.

**IT IS SO ORDERED.**

Dated this 7<sup>th</sup> day of June, 2006.

/s/ *Daniel L. Hovland*

Daniel L. Hovland, Chief Judge  
United States District Court